

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7660

Joint petition of Vermont Marble Power	)
Division of OMYA Inc. ("VMPD") for consent	)
to sell, and Central Vermont Public Service	)
Corporation to purchase, certain assets of	)
VMPD, and approval of certain other related	)
matters, including revocation of VMPD's	)
Certificate of Public Good	)

Order entered: 10/13/2010

**ORDER RE MOTION TO INTERVENE BY THE TOWN OF PROCTOR**

On October 4, 2010, the Town of Proctor, a Vermont municipality, filed a motion to intervene in this proceeding with the Public Service Board ("Board"). The Town of Proctor seeks permission to intervene, on its own behalf and as a representative of individual residential and commercial customers of Vermont Marble Power Division of OMYA Inc. ("VMPD"), pursuant to Board Rule 2.209.

In its motion to intervene, the Town of Proctor acknowledges that the Department of Public Service ("Department") represents the interests of all ratepayers in this proceeding, including the existing customers of VMPD and the existing and future customers of Central Vermont Public Service Corporation ("CVPS"). However, the Town of Proctor contends that no existing party represents the distinct interests of VMPD customers alone. It also understands that the rates charged by CVPS are substantially higher than the rates charged to existing VMPD customers and asserts that VMPD ratepayers could be adversely and significantly affected by the outcome of this proceeding. Furthermore, the Town of Proctor contends that its participation as a party in this proceeding is the exclusive means by which existing VMPD ratepayers can protect their interests. The Town of Proctor indicates that it is aware of the schedule for this docket and maintains that its intervention will not cause delay in this proceeding.

VMPD filed a response to this motion to intervene on October 8, 2010.<sup>1</sup> VMPD states that it does not oppose the Town of Proctor's motion, but notes that it is not clear from the motion whether the Town of Proctor is seeking permissive intervention or intervention as of right. VMPD observes there is no statutory right for the Town of Proctor to participate as a party in this particular proceeding, either in its own right, as a customer of VMPD, or as a representative of individual and commercial customers of VMPD. VMPD requests that the Town of Proctor's participation in this proceeding be limited to "the level of rates to be charged to the Town of Proctor and existing residential and commercial customers of VMPD."<sup>2</sup>

Whether or not the Town of Proctor has established a sufficient basis for intervention as of right under Rule 2.209(A), there appears little reason not to grant it permissive intervention under Rule 2.209(B) given the absence of opposition from the existing parties. Nevertheless, the Town of Proctor's motion that it be permitted to intervene not only "for itself," but also "as a representative of individual residential and commercial customers of VMPD" is problematic because the Town of Proctor lacks express authorization in law or contract to represent other ratepayers.

Accordingly, I grant the Town of Proctor's motion to intervene as a party in this proceeding on its own behalf, but not as an express representative of other VMPD ratepayers. This limitation is not intended to suggest, however, that the Town of Proctor's participation in this proceeding will necessarily be limited solely to its own interests as an existing customer of VMPD. As a municipality, the Town of Proctor's own interests in this proceeding are broader than its interests as a VMPD customer and may involve, for example, the effect of the acquisition and other proposals on its tax base and on the economic well-being of its residents and businesses, who are VMPD customers.

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1. The schedule for this proceeding, which was agreed to by the parties, and adopted as set forth in the Prehearing Conference Memorandum of 9/16/10, established October 6, 2010, as the due date for responses to motions to intervene. In a letter accompanying its response, VMPD states that the other existing parties and the Town of Proctor have no objection to the delay in filing its response. No other responses to the Town of Proctor's motion to intervene have been filed with the Board.

2. VMPD's Response to Town of Proctor Motion to Intervene at 1.

Finally, the proposal by VMPD to limit the Town of Proctor's participation in this proceeding solely to "the level of rates" seems unduly narrow. The Town of Proctor may have concerns about the petition beyond the effect on rates, such as, for example, the effect on service quality.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 13<sup>th</sup> day of October, 2010.

s/ Lars Bang-Jensen, Esq.

Lars Bang-Jensen  
Hearing Officer

OFFICE OF THE CLERK

FILED:      October 13, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*